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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,441	05/29/2001	Doug Grumann	10002687-1	3760
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HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			EXAMINER YIGDALL, MICHAEL J	
			ART UNIT	PAPER NUMBER
			2192	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/865,441

Applicant(s)

GRUMANN, DOUG

Examiner

Michael J. Yigdall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is responsive to Applicant's submission filed on January 17, 2006.
Claims 1-6 and 8-20 are pending.

Response to Arguments

2. Applicant's arguments have been fully considered but they are not persuasive.

Applicant contends, "At no time is Barritz's apparatus 'restarted' to engage the monitoring program 22 or any other part of Barritz's apparatus," and therefore concludes that "claim 1 includes features not disclosed or suggested by Barritz and Kutcher" (remarks, page 6, sixth paragraph to page 7, top paragraph).

However, the examiner does not agree. In plain language, claim 1 recites, "restarting the performance management software to engage the configuration of the performance management tools" (lines 12-13). Examples of performance management tools in Barritz are the monitoring program 22 and the reporting program 60 (see, for example, FIG. 1). There is also a surveying program 12 that conducts an inventory of the software on the computer system and records this information to a system configuration log 66 "for use at a later time" (column 9, lines 27-33). Later, the reporting program 60 is started (step 300 in FIG. 6) to engage the system configuration log 66 (step 310 in FIG. 6). The reporting program 60 uses the system configuration log 66 to operate (see, for example, column 8, lines 36-42), and therefore the system configuration log 66 is in fact a "configuration" of the reporting program 60, a performance management tool. Thus, Barritz teaches starting the performance management software to engage the configuration of the performance management tools.

Although Barritz illustrates “starting” the performance management software (step 300 in FIG. 6), the result is the same as “restarting” the performance management software in the sense recited in claim 1. Barritz does not teach away from such “restarting.” The purpose of starting or restarting the performance management software is to engage the configuration. This is a necessary step whether the software is started for the first time or “restarted” again later. The system configuration log 66 is engaged every time the reporting program 60 is started or restarted, as illustrated in FIG. 6.

Moreover, the system configuration log 66 changes as software is added to or removed from the computer system, and the reporting program 60 must engage the latest system configuration log 66 to reflect these changes. For example, Barritz discloses, “An interactive user 26 may request the surveying program 12 to survey a single storage device, (e.g. storage device 14), for instance, because the operator 26 knows either that a software product has been installed on that storage device 14 or that a software product has been removed from that storage device 14 since the last time the survey program 12 surveyed that device 14” (column 4, lines 56-63, emphasis added). In other words, the surveying program 12 is restarted to record the latest information to the system configuration log 66. Likewise, the recording program 60 is necessarily restarted to engage the latest system configuration log 66. If this were not the case, the reports from the reporting program 60, which are derived from the system configuration log 66 (see, for example, column 8, lines 43-63), would not accurately reflect the configuration of the computer system. Just as the reporting program 60 is started the first time (step 300 in FIG. 6) to engage the system configuration log 66 (step 310 in FIG. 6), the reporting program 60 is

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also started again or “restarted” to engage the latest system configuration log 66, so as to reflect any changes since the first time.

Thus, Barritz and Kutcher do in fact disclose or suggest the limitation, “restarting the performance management software to engage the configuration of the performance management tools,” as recited in the plain language of claim 1.

Response to Amendment

3. The rejection of claims 1-6 and 8-20 under 35 U.S.C. 112, first paragraph, is withdrawn in view of Applicant’s amendment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,590,056 to Barritz (art of record, “Barritz”) in view of U.S. Patent No. 6,301,615 to Kutcher (art of record, “Kutcher”).

With respect to claim 1 (currently amended), Barritz discloses a method for automatically configuring performance management software in a computer system (see, for example, the abstract), comprising:

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(a) inventorying applications (see, for example, column 9, lines 23-27, which shows a surveying program 12 for inventorying executable files or applications);

(b) generating an inventory list of the applications (see, for example, column 9, lines 27-33, which shows generating a system configuration log 66 or inventory list of the applications).

Although the monitoring and reporting programs disclosed by Barritz (see, for example, monitoring program 22 and reporting program 60 in FIG. 1) and other such performance management tools are inherently executable files, Barritz is silent as to whether any of the executable files included in the inventory are performance management tools.

However, Kutcher discloses a method for configuring performance management software (see, for example, column 10, lines 23-43) based on a plurality of preexisting performance management tools (see, for example, column 2, lines 30-34 and column 4, lines 26-30). Kutcher further discloses listening for or inventorying newly started performance management tools, so as to include the additional tools in the configuration (see, for example, column 10, line 64 to column 11, line 11). By leveraging the performance management tools provided by the operating system, the need for updates due to changes in the operating system is reduced (see, for example, column 4, lines 38-52).

One of ordinary skill in the art would have been motivated to apply the method of Barritz to a plurality of preexisting performance management tools, such as taught by Kutcher. For example, Barritz discloses that different operating systems provide different mechanisms by which monitoring program 22 can “see” events (see, for example, column 7, lines 51-55). In view of Kutcher, a plurality of such monitoring programs would be provided for the different mechanisms provided by the different operating systems. Therefore, it would have been obvious

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to one of ordinary skill in the art at the time the invention was made to include the performance management tools in the inventory.

Although Barritz also discloses that the inventory provides system configuration information to the reporting program 60 (see, for example, column 8, lines 36-42), and thus the system configuration log 66 is considered to be a performance management tools configuration, Barritz does not expressly disclose:

(c) using the inventory list, generating a performance management tools configuration consisting of application-specific interfaces, performance thresholds, collection parameters and alarms applicable to specific performance management tools and the current operating system environment.

However, Kutcher further discloses that the configuration includes filters (see, for example, column 10, lines 23-43), which are application-specific interfaces for each performance management tool (see, for example, column 8, lines 43-48). The filters or interfaces enable the use of performance management tools that have disparate output formats (see, for example, column 5, lines 22-26 and column 6, lines 10-14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the configuration generated by Barritz with application-specific interfaces, such as taught by Kutcher. The modification would enable the use of a plurality of preexisting performance management tools that have disparate output formats.

Moreover, Barritz also discloses that the monitoring program 22 may be configured to monitor whether the licensed number of users has been exceeded and to issue a warning message (see, for example, column 10, line 50 to column 11, line 3). The number of concurrent users

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permitted and the warning message are considered a performance threshold and an alarm, respectively. Likewise, Barritz also discloses that the monitoring program 22 may be configured to operate constantly or for a sampling period (see, for example, column 9, lines 55-62), which is considered a collection parameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the performance threshold, alarm and collection parameter in the configuration.

Barritz also discloses:

(d) restarting the performance management software to engage the configuration of the performance management tools (see, for example, FIG. 6, which shows engaging the configuration at step 310 each time the reporting program is started or restarted at step 300, and note that the reporting program is inherently restarted to engage the latest configuration after the surveying program itself is restarted, as in column 4, lines 56-63).

With respect to claim 2 (original), Barritz also discloses the limitation wherein the method is executed upon start up of the computer system (see, for example, column 4, lines 53-56, which shows executing the method when it is first introduced on a computer system, i.e. upon start up of the computer system).

With respect to claim 3 (original), Barritz also discloses the limitation wherein the method is executed on demand (see, for example, column 4, lines 50-53, which shows executing the method by an operator or interactive user, i.e. on demand).

With respect to claim 4 (original), Barritz also discloses the limitation wherein the method is executed periodically (see, for example, column 4, lines 50-53, which shows executing the method periodically).

With respect to claim 5 (original), Barritz also discloses the limitation wherein the method is executed automatically (see, for example, column 4, lines 50-53, which shows executing the method by another program, i.e. automatically).

With respect to claim 6 (original), although Barritz discloses writing the inventory such that the information can be displayed and manipulated by well-known programs (see, for example, column 9, lines 34-40), Barritz does not expressly disclose the limitation wherein the step of generating the inventory list comprises writing inventory information to an ASCII-format file. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the inventory of Barritz as an ASCII-format file, so as to further ensure that the information can be displayed and manipulated by well-known programs.

With respect to claim 8 (original), Barritz also discloses the limitation wherein the inventory step comprises inventorying installed application programs and installed performance management tools (see, for example, column 9, lines 27-29, which shows surveying or inventorying products installed on the computer system).

With respect to claim 9 (original), Barritz also discloses inventorying active application programs and active performance management tools, wherein the active application programs and performance management tools are flagged to indicate an active status (see, for example,

column 6, lines 58-65, which shows recording or inventorying active programs and an indication of whether the program is loaded from a library or is resident, i.e. an indication of the active status or a flag indicating the active status).

With respect to claim 10 (original), Barritz also discloses:

- (a) manually amending the inventory list (see, for example, column 11, lines 16-25, which shows manually amending the inventory); and
- (b) repeating the step of generating the performance management tools configuration (see, for example, column 11, line 63 to column 12, line 4, which shows repeating the step of generating the system configuration log).

With respect to claim 11 (original), Barritz also discloses storing the inventory list and the performance management tools configuration in a memory (see, for example, column 5, lines 35-40, which shows storing the system configuration log in memory).

With respect to claims 12 (currently amended) and 13-18 (original), the claims recite an apparatus that corresponds to the method recited in claims 1, 2, 4-6 and 8-10 (see the rejections of claims 1, 2, 4-6 and 8-10 above).

With respect to claims 19 (previously amended) and 20 (original), the claims recite a method that corresponds to the method recited in claims 1 and 8-10 (see the rejections of claims 1 and 8-10 above).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

Michael J. Yigdall
Examiner
Art Unit 2192

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SUPERVISORY PATENT EXAMINER